

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

SMILEDIRECTCLUB, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 7

(Previously Chapter 11)

Case No. 23-90786 (CML)

(Jointly Administered)

**DIP AGENT AND INTERESTED PARTIES’ (I) STATEMENT OF THE ISSUES ON  
APPEAL, (II) DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON  
APPEAL, AND (III) CERTIFICATION OF NO TRANSCRIPTS ORDERED**

Pursuant to Rules 8009(a)(1) and 8009(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Cluster Holdco LLC, in its capacity as administrative agent and collateral agent (the “DIP Agent”), by and through its counsel, DLA Piper LLP (US), and David Katzman, Steven Katzman, Susan Greenspon Rammelt, Kyle Wailes, Richard Schnall, and Camelot Venture Group (collectively, the “Interested Parties” and together with the DIP Agent, the “Joint Appellants”), hereby respectfully submit the following: (I) statement of issues to be presented on appeal, (II) designation of items to be included in the record on appeal, and (III) certification of no transcripts ordered with respect to the appeal.

The appeal is pending before the United States District Court for the Southern District of Texas at Civil Action 4:25-cv-1771.

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<sup>1</sup> A complete list of each of the Debtors in these chapter 7 cases may be obtained on the website of the Debtors’ solicitation agent (as defined herein) at <https://restructuring.ra.kroll.com/SmileDirectClub>. The location of Debtor SmileDirectClub, Inc.’s principal place of business and the Debtors’ service address in these chapter 7 cases is 1530 Antioch Pike, Antioch, Tennessee 37013.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Joint Appellants submit the following statement of issues on appeal:

1. Did the Bankruptcy Court err in granting the Renewed Application for Entry of an Order Authorizing the Retention and Employment of Orrick, Herrington & Sutcliffe LLP as Special Litigation Counsel to the Chapter 7 Trustee?

2. Even if the Bankruptcy Court properly appointed Orrick, Herrington & Sutcliffe LLP as Special Litigation Counsel, did the court err by including language in the Order Authorizing the Retention and Employment of Orrick, Herrington & Sutcliffe LLP as Special Litigation Counsel that violates the separate “Final Debtor-in-Possession Order” that the court had entered on November 7, 2023 by allowing the Trustee to pursue claims and causes of action owned by the DIP Agent.

3. Did the Bankruptcy Court err by depriving the Interested Parties of the ability to develop an evidentiary record before the court issued the Order Authorizing the Retention and Employment of Orrick, Herrington & Sutcliffe LLP as Special Litigation Counsel to the Chapter 7 Trustee?

4. Did the Bankruptcy Court err in denying the DIP Agent’s and Interested Parties respective Motions to Reconsider the Order Authorizing the Retention and Employment of Orrick, Herrington & Sutcliffe LLP as Special Litigation Counsel to the Chapter 7 Trustee?

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

The Joint Appellants hereby submit this list of designations to be included in the record on appeal (including any exhibit, annex, or addendum attached thereto):

	Description	Docket No.
1.	Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Authorizing the Use of Cash Collateral, and (IV) Modifying the Automatic Stay	296
2.	Agreed Order (I) Authorizing (A) Consensual Use of Cash Collateral and (B) the Exercise of certain Rights and Remedies Under the Final DIP Order, and (II) Granting Related Relief	655
3.	Stipulation and Agreed Order Extending Certain Consensual Uses of Cash Collateral Through March 2024	787
4.	Stipulation and Agreed Order Extending Certain Consensual Uses of Cash Collateral Through April 2024	800
5.	Stipulation and Agreed Order Extending Certain Consensual Uses of Cash Collateral Through May 2024	811
6.	Stipulation and Agreed Order Extending Certain Consensual Uses of Cash Collateral, Abandonment of Non-Debtor Foreign Subsidiaries Equity Interests, and Related Matters	837
7.	Declaration of Allison D. Byman in Support of Chapter 7 Trustee's Motion for Entry of an Order (I) Authorizing and Approving Litigation Arrangement, (II) Granting Priming Liens and Providing Claims with Superpriority Status, (III) Approving the Payment of Certain Related Fees and Expenses, and (IV) Granting Related Relief	844-1
8.	Application for Entry of an Order Authorizing the Retention and Employment of Orrick, Herrington & Sutcliffe LLP as Special Litigation Counsel to the Chapter 7 Trustee	847
9.	D'Aversa Declaration (Exhibit A) to Application for Entry of an Order Authorizing the Retention and Employment of Orrick, Herrington & Sutcliffe LLP as Special Litigation Counsel to the Chapter 7 Trustee	847-1
10.	Order Denying Application to Employ Special Litigation Counsel for Chapter 7 Trustee	908
11.	October 18, 2024 Hearing Transcript	916

	Description	Docket No.
12.	Emergency Motion for Order Confirming Chapter 7 Trustee is Authorized and Empowered to Waive the Debtors' Attorney/Client Privileges	920
13.	Objection to Securities Plaintiffs' Emergency Motion for Order Confirming Chapter 7 Trustee is Authorized and Empowered to Waive the Debtors' Attorney/Client Privileges and accompanying exhibits	951 951-1 – 951-14
14.	Objection / DIP Agent's Limited Objection and Reservation of Rights to Securities' Plaintiffs' Emergency Motion for Order Confirming Chapter 7 Trustee is Authorized and Empowered to Waive the Debtors' Attorney/Client Privileges	952
15.	Declaration of Ben Winger in Support of Objection / DIP Agent's Limited Objection and Reservation of Rights to Securities' Plaintiffs' Emergency Motion for Order Confirming Chapter 7 Trustee is Authorized and Empowered to Waive the Debtors' Attorney/Client Privileges and accompanying exhibits	953
16.	Emergency Motion to Continue Hearing on Securities Plaintiffs' Emergency Motion for Order Confirming Chapter 7 Trustee is Authorized and Empowered to Waive the Debtors' Attorney/Client Privileges and accompanying exhibits	954 954-1 – 954-10
17.	Renewed Application for Entry of an Order Authorizing the Retention and Employment of Orrick, Herrington & Sutcliffe LLP as Special Litigation Counsel to the Chapter 7 Trustee	957
18.	D'Aversa Declaration (Exhibit A) to Renewed Application for Entry of an Order Authorizing the Retention and Employment of Orrick, Herrington & Sutcliffe LLP as Special Litigation Counsel to the Chapter 7 Trustee	957-1
19.	Order Granting Emergency Motion to Continue Hearing on Securities Plaintiffs' Emergency Motion for Order Confirming Chapter 7 Trustee is Authorized and Empowered to Waive the Debtors' Attorney/ Client Privileges	959
20.	December 20, 2024 Status Hearing Transcript	966

	<b>Description</b>	<b>Docket No.</b>
21.	DIP Agent's Objection to the Renewed Application for Entry of an Order Authorizing the Retention and Employment of Orrick, Herrington & Sutcliffe LLP as Special Litigation Counsel to the Chapter 7 Trustee	972
22.	Motion to Adjourn Trustee's Renewed Application for Retention of Orrick or, Alternatively, Objection to Trustee's Renewed Application for Retention of Orrick	973
23.	Declaration of Michael B. Silverstein in Support of Interested Parties' Motion to Adjourn Trustee's Renewed Application for Retention of Orrick or, Alternatively, Objection to Trustee's Renewed Application for Retention of Orrick and accompanying exhibits	974 974-1 – 974-3
24.	Chapter 7 Trustee's Omnibus Reply in Support of Renewed Orrick Retention Application	976
25.	Declaration of Allison D. Byman in Support of Chapter 7 Trustee's Omnibus Reply in Support of Orrick Retention Application	977
26.	Declaration of Jeffrey W. McKenna in Support of Chapter 7 Trustee's Omnibus Reply in Support of Renewed Orrick Retention Application	978
27.	Emergency Motion, Motion to Compel Orrick to Comply with Subpoena	979
28.	Declaration of Michael B. Silverstein in Support of Emergency Motion to Compel Orrick to Comply with Subpoena and accompanying exhibits	980 980-1 – 980-6
29.	Order Adjourning Hearings and Setting Status Conference	982
30.	Response in Opposition to the Insider Defendants' Emergency Motion to Compel	987
31.	February 3, 2025 Status Hearing Transcript	998
32.	Update Pursuant to Court Directive of Non-Party Orrick, Herrington, & Sutcliffe LLP	999

	<b>Description</b>	<b>Docket No.</b>
33.	DIP Agent's Witness and Exhibit List for Hearing on February 14, 2025 at 9:00 A.M. (CT)	1010  1010-13 and 1010-16
34.	Interested Parties' Notice of Filing Exhibits for February 14, 2025 Hearing	1013  1013-3, 1013-4, 1013-11, 1013-12, 1013-15, 1013-16, and 1013-18
35.	Order Granting Renewed Application for Entry of an Order Authorizing the Retention and Employment of Orrick, Herrington & Sutcliffe LLP as Special Litigation Counsel to the Chapter 7 Trustee	1019
36.	February 14, 2025 Hearing Transcript	1024
37.	First Supplemental Declaration of Joshua W. Wolfshohl in Connection with the Application for Entry of an Order Authorizing the Retention and Employment of Porter Hedges LLP as Special Counsel for Allison D. Byman, Chapter 7 Trustee	1025
38.	DIP Agent's Motion for Reconsideration of Order Granting Second Orrick Retention Application	1031
39.	Motion to Reconsider Order Granting Renewed Application	1032
40.	Second Supplemental Declaration of Joshua W. Wolfshohl in Connection with the Application for Entry of an Order Authorizing the Retention and Employment of Porter Hedges LLP as Special Counsel for Allison D. Byman, Chapter 7 Trustee	1034
41.	First Supplemental Declaration of Raniero D'Aversa in Connection with the Renewed Application for Entry of An Order Authorizing the Retention and Employment of Orrick, Herrington & Sutcliffe LLP as Special Litigation Counsel to the Chapter 7 Trustee	1036
42.	Trustee's Objection to Motions to Reconsider	1046
43.	Order Denying Motions for Reconsideration	1050

	Description	Docket No.
44.	DIP Agent's and Interested Parties' Joint Notice of Appeal to District Court	1051

**Reservation of Rights**

The Joint Appellants expressly reserve the right to supplement this designation and the record on appeal with any relevant materials from the above-captioned chapter 7 bankruptcy cases.

**Certificate of No Transcript Ordered Re: Notice of Appeal**

The Joint Appellants by and through their undersigned counsel certify, pursuant to Fed. R. Bankr. P. 8009(b), that they are not ordering additional transcripts with respect to this appeal.

*[Remainder of page intentionally left blank]*

Dated: April 30, 2025

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